

## **ENVIRONMENTAL QUALITY COUNCIL**

January 9, 1998

Original Minutes with Attachments

### **COUNCIL MEMBERS PRESENT**

Rep. Vicki Cocchiarella, Co-Chair  
Sen. Ken Mesaros, Co-Chair  
Rep. Haley Beaudry  
Sen. Vivian Brooke  
Sen. William Crismore  
Rep. Kim Gillan  
Sen. Lorents Grosfield  
Rep. George Heavy Runner

Sen. Bea McCarthy  
Rep. Karl Ohs  
Rep. William Tash  
Ms. Julie Lapeyre  
Mr. Bill Snoddy  
Mr. Jerry Sorensen  
Ms. Jeanne-Marie Souvigney  
Mr. Gregory Tollefson

### **STAFF MEMBERS PRESENT**

Mr. Todd Everts  
Ms. Kathleen Williams

Ms. Martha Colhoun  
Mr. Larry Mitchell

### **VISITORS' LIST**

#### **Attachment #1**

### **COUNCIL ACTION**

- Adopted minutes of the November 14, 1997, EQC meeting.
- Approved supporting a resolution to increase the appropriation for the Abandoned Mine Program.
- Approved co-sponsoring a DEQ watershed coordination and planning meeting in February.
- Requested that Mr. Everts work with the co-chairs and Angie Grove, LAD, to develop a list of questions to be incorporated into the DEQ Permitting Bureau audit and report back to the EQC before the next session.
- Requested that Ms. Lapeyre check into whether there is a consistent policy throughout state agencies for providing state employees the Legislative Auditor's fraud hotline number.

## **I. CALL TO ORDER AND ROLL CALL**

CO-CHAIR CO called the meeting to order at 7:00 p.m. Roll call was noted; all members were present.  
(Attachment #2.)

## **II. ADOPTION OF MINUTES**

**Motion/Vote: REP. TASH MOVED THAT THE MINUTES OF THE NOVEMBER 14, 1997 EQC MEETING BE APPROVED AS WRITTEN. THE MOTION CARRIED UNANIMOUSLY.**

## **III. MEETING PROCEDURE AND PROCESS**

MR. EVERTS stated that this Council would weigh the considerations of the necessity for individual privacy with the right for public disclosure. The right to privacy includes the right not to have one's personality raised in an open public meeting or the right not to have one's job performance raised in a public meeting, unless the person waives those rights. The Council also has a legal obligation to raise that right on behalf of the individual.

CO-CHAIR MESAROS stated it was the role of the EQC to review environmental policy and process. Public comment is welcome.

## **IV. DEPARTMENT OF ENVIRONMENTAL QUALITY**

### *1. Director Simonich's Response to EQC Questions Regarding the Reorganization of the Impact Assessment Bureau and Related Matters*

**Director Simonich** stated that a written response to the EQC questions had been provided to MR. EVERTS earlier in the week, **Exhibit 1**. Throughout the past two and a half years of reorganizing the Department of Environmental Quality, they have focused on appropriately and accurately administering the laws of the state of Montana. That is what they are doing. The process of fine tuning the department is an ongoing process. The action he took several weeks ago to abolish the Impact Assessment Bureau and reassign responsibilities was in response to public comment as well as input from employees.

He stated that he appreciated the effort **Governor Racicot** put into the investigation of the events surrounding the resignation of the DEQ communications officer which he explained to the Council last evening. He very firmly believes that the Department has an open policy towards the public, the media, and the legislature. As members of a regulatory agency, there are times when they are intensively involved in accomplishing their daily tasks and are not as proactive in disseminating information as possible. It is certainly

not with malice or intent to deceive the public. Their employees are expected to be as forthright and up front with the public as is possible.

SEN. GROSSFIELD commented that in 1997, 1,810 environmental assessments (EAs) were completed. He asked how many would involve public comment.

**Director Simonich** replied that 1,810 EAs were completed by the Permitting Division and 23 EAs were completed by the Remediation Division. EAs were completed for ten abandoned mine projects and 23 involved underground tank installations or removals. Approximately 1,400 EAs involved subdivisions. Approximately 1,200 are checklist EAs due to the time frame involved in the Sanitation and Subdivision Act. On average there is very little public comment on EAs. Each EA is copied to the Governor's Office and the EQC. There is a great deal of activity in developing new or expanding gravel pits, which accounts for approximately 203 EAs.

MS. SOUVIGNEY asked if the flow chart attached included the Impact Assessment Bureau. She questioned where the responsibilities were placed.

**Director Simonich** stated this flow chart was not intended to show the actual organization but rather it showed the responsibilities which were being placed in the new DEQ from former agencies. In the consideration of SB 234, they had anticipated the idea of creating an impact assessment team. In 1995, they inherited seven divisions from the Department of Natural Resources (DNRC), the Department of State Lands (DSL) and the Department of Health and Environmental Sciences (DHES). Other than the central management division, the divisions were specific to a particular media, i.e. water quality, air quality, waste management, etc. They recognized that there were permitting, enforcement and clean up responsibilities in each area so they began to recreate the structure based on that. This resulted in a Permitting and Compliance Division which is responsible for all permitting, other than licensing underground tanks. Another division is the Planning, Prevention and Assistance Division which handles non-regulatory activities. This included the state revolving fund loan program, technical assistance, and energy conservation. They also created an Enforcement Division and a Remediation Division.

They worked with an oversight task force set up by the Governor. There wasn't a unified decision on how MEPA should be handled in the Department. Some people wanted it in the Planning Division while others wanted it in the Permitting Division. Attachment #2 is a memo explaining where MEPA should be handled.

He chose to split the responsibilities. Because of the huge amount of work relative to EAs, too many people would be drawn away from permitting and compliance activities to support the team. Planning was responsible for two items relative to MEPA. One responsibility was for the development of MEPA policies. The other responsibility was that the large, mine-related EISs would be placed into the Planning Division.

In October of 1997, he decided to abolish the Impact Assessment Bureau and transfer those responsibilities into other areas within the Department. The Impact Assessment Team would look at the larger EISs. The team is in a division where there will be greater accountability because there will be one manager instead of two division managers. The Impact Assessment Team is a separate unit within the Permitting Division. The Division Administrator and a specific manager of the unit will be able to provide the necessary coordination.

MS. SOUVIGNEY stated it would be helpful to see current organizational flow charts.

**Director Simonich** replied he would make the charts available to the EQC.

MR. TOLLEFSON stated that people of honest purpose had raised questions regarding the Department which need to be answered. He remarked that it was unfortunate that a personnel issue within the Department brought to a head the questions which have been long simmering about the DEQ in the areas of staff unrest and turnover and the organization's failure to keep up with the workload. Reorganization came about to address these issues. If the concerns are legitimate, what is being done to find resolution to the problems.

**Director Simonich** remarked that the view that their employees would not come forward was cynical. Within every department of state government, there are honest, committed and dedicated employees. On numerous occasions, employees have come into his office to discuss the water cooler discussions going on with the Department. The discussions have been open and honest. He has looked for opportunities for improvement. It is human nature to fear retribution. In the fall of 1995, they assigned volunteers to various work teams to stimulate input. An individual resigned from the work team and stated his reason was that his expertise didn't fit in that work team. **Director Simonich** stated that was fine. The individual went to the Governor to explain that reorganization was a bad idea and gave him some ideas on how it should be handled. The Governor gave **Director Simonich** the plan and shared with him the name of the individual. Subsequently, they hired 14 bureau chiefs. This individual, who quit the work team and had gone to the Governor with his

issues, was one of the successful candidates for bureau chief. He welcomes and encourages open dialogue within the Department.

MR. TOLLEFSON asked if he would then welcome a survey of employees attitudes and satisfaction.

**Director Simonich** stated that he would not object to any honest and objective survey of employees of the Department.

MR. TOLLEFSON stated that the DEQ met with the EQC in September and discussed the activities of the Impact Assessment Bureau and there was no hint that the Bureau would be eliminated in a month. The tenor of the presentation was that all was going well within the Bureau. As a result of the dissolution of the Impact Assessment Bureau, an individual suddenly became responsible for the most sensitive ongoing EIS in the state. This individual had been involved in the Rock ASARCO problems and had also been bureau chief of the hard rock bureau when that bureau was subjected to a legislative audit which found numerous problems.

He continued that everyone in public life is involved with spin doctoring. Something needs to be done to alleviate the skepticism.

**Director Simonich** stated that he did not share the assumption that if a survey turns up results which are not favorable to his position, that he would view it as a bad survey. There are ways to look into the validity of a survey. He agrees that there is a lot of skepticism about how the Department operates and whether or not our environment is being protected. The public's view is colored by what they see in the press. The Department deals with the skepticism by trying to keep the public informed in an honest and forthright manner. He does not believe that part of his job is spin doctoring. When he makes a decision, he needs to be able to defend the decision. He has full faith and confidence in the decisions which he has made and the people which he has in place at this time.

REP. HEAVY RUNNER stated that he was interested in the role of the Natural Resources Reorganization Oversight Task Force. He questioned the length of time the task force was to oversee the reorganization?

**Director Simonich** stated it was the Governor's decision to appoint a 15 member task force. That task force provided input and acted as a sounding board for both former departments as they began to reorganize into

one Department of Environmental Quality. They met during the summer and fall of 1995. It was their intention to call them back from time to time.

REP. HEAVY RUNNER remarked that the reason for reorganization was to address the inefficiencies, financial costs, inconsistent policies, and potential conflicts of interests in the departments. He asked if the reorganization efforts had addressed the above-mentioned reasons for change.

**Director Simonich** stated that the task force which came up with the above-mentioned recommendations presented their findings to the Governor. The Governor did not choose to accept some of the recommendations. Their efforts were pointed toward trying to integrate the resources, provide some efficiencies, and allow the public to have a better opportunity to interact with the departments.

SEN. BROOKE stated that during the passage of SB 234, she recommended an amendment setting up an oversight committee, which would report to the EQC regarding the progress of the transition. This oversight committee would have become part and parcel of the legislation. The amendment was met with anger and resentment on the part of the administrative representative. No matter what side of the fence you are on, an oversight committee is a healthy thing. She is in support of an oversight committee that would be a valid working committee.

SEN. BROOKE continued that the recent communications the EQC has received from **Director Simonich** have included the terms coordination and cooperation in reference to the Impact Assessment Bureau. Her interpretation is that the director of the Bureau couldn't coordinate and was uncooperative. She asked for specific examples.

**Director Simonich** stated that he was not looking at specific performance of individuals. He was recognizing a fact that the placement of the MEPA group necessitated a great deal of coordination with other staff in other divisions within the department. Cooperation was essential. Because of the elements in place, this was not being achieved. The terms cooperation and coordination were used frequently by the members of the Natural Resource Reorganization Oversight Task Force.

When they disassociated from that division the specific responsibility for MEPA, it created a heightened need for coordination between the impact assessment group and the permitting division. Time schedules impact other work which needs to be completed. Coordination was also essential. There was a need to have an

individual who was accountable for bringing staff together to make a recommendation. They were within four days of going to the printer with a the draft EIS for the Golden Sunlight project without a staff recommendation for a preferred alternative because of very professional differences of opinion. The decision for a preferred alternative would have been left to the director. He didn't think that was the best way to proceed. He made the decision to abolish the bureau and bring the responsibilities for MEPA into the division which has most of the technical expertise needed for MEPA project.

SEN. BROOKE asked about the liability of the Department if Morrison/Maierle claimed a contract was canceled.

**Director Simonich** stated they have a good working relationship and are moving forward. He did not believe that there was any liability to the state. In reference to the copies of the correspondence he had provided to the EQC members regarding the Department and Morrison/Maierle, he stated that they had some extensive discussions with executives of Morrison/Maierle to make sure that they were keeping the EIS on track. There were some professional differences of opinion which were strongly stated at times. The letter was instrumental in causing both parties to resolve their differences. The reason for the second letter was that the issue was being played out publicly and he had a concern about the liability the state may have if it were portrayed that they were denigrating the professional reputation of one of their contractors, which was a business in the state. From his perspective, the work accomplished by Morrison/Maierle had been done professionally.

SEN. BROOKE asked if the value of a contractor's reputation is more paramount than the actual work being performed.

**Director Simonich** stated that was not the case. Their ability to perform the contract was discussed and laid to rest. The reason for the letter was that it was being portrayed publicly that the Department was suggesting that they were not capable of performing the contract. That was not the Department's position. He needed to make this clear so that the Department would not be subject to needless litigation.

REP. GILLAN stated that she had been contacted by several organizations in the Billings area. The Lockwood Water Users Assoc. and the City of Billings Public Works Department had not received responses to fairly simple inquiries within a five to six month time frame. It seemed that in order to get something done, someone immediately had to go to the Director's Office. Will this change in the future?

**Director Simonich** stated that on technical matters they try to make sure the information is correct so they can respond appropriately. In creating the new department, they went through an extensive recruiting process for division administrators and bureau chiefs. When he receives calls, he takes the problem back to the division administrator and asks them to resolve the problem. He does not want to make technical decisions. It is important to recognize the issue and have the individuals with the appropriate level of expertise answer the questions. Policy questions need to be handled by management. The Lockwood situation is difficult because it involves advice given by staff to a board which is attached to the Department. There were two parties involved and it was necessary to take the time to provide appropriate responses.

REP. GILLAN stated that as a business person her concern was that some of these time frames are costing people money. She asked the Department to move a little quicker in the future.

SEN. GROSSFIELD stated he appreciated the thoroughness of **Governor Racicot's** report to the EQC and also the thoroughness of the investigation. The people who are involved with environmental policy have come to a conscious awareness and are trying to promote the concept that enforcement and compliance involves more than a big club. Incentives and education are very important. Last interim this Council came to a consensus that that was the direction we needed to pursue. However, a lot of people with honest purpose do not agree. This includes people both inside and outside of government. He asked how the people within his agency either accepted or rejected the different approach to enforcement and compliance.

**Director Simonich** stated they have had extensive discussions and the staff has mixed feelings. Some staff have welcomed the new approach while other staff honestly believe there is a need for a strong enforcement approach. Staff members have deeply held beliefs and there is frustration on both issues. As the necessary processes are put into place, he believes the staff will be comfortable in moving forward in the type of regulatory environment the state is moving towards.

MR. TOLLEFSON stated that the track record for enforcement has been spotty. Based on audits and the enforcement and compliance study, we know that there have been problems. For whatever reasons, the DEQ and its predecessors have not enforced laws in a timely and even handed manner. Reorganization came about as a way to cure the problems. He questioned whether the DEQ is currently doing a better job in addressing these problems.



**Director Simonich** replied that they are making significant progress toward achieving their goals in terms of more timely responses to permitting and enforcement activities. There is a better integration of their resources. **John Arrigo, Administrator of the Enforcement Division**, will be sharing his year end report with the Council this morning. They have had progress in moving the backlog of water quality enforcement cases. The DEQ will continue to provide updates and status to the Council. He hoped the Council would join him in the same level of confidence that progress is being made to protect the environment of the state.

MS. SOUVIGNEY stated that her understanding of the abolishment of the Impact Assessment Bureau was due to a failure to meet deadlines. She asked what criteria would be used to assess the new approach.

**Director Simonich** explained the new approach was necessary for coordination of staff resources so that they would be getting the full input from the experts within the Department. The staff oftentimes establishes their own schedules. He expects the staff to meet the deadlines. They will continue to monitor the new approach to make sure that the work throughout the division is being accomplished on a timely basis.

CO-CHAIR COCCHIARELLA asked if they had pursued a replacement for Jim Robinson.

**Director Simonich** explained they had a short list of candidates and were scheduling interviews. The position should be filled in the near future. In the absence of Mr. Robinson, another individual has been assigned oversight responsibilities. Ms. Olsen has been personally providing oversight as well.

CO-CHAIR COCCHIARELLA stated that in the past EQC staff has been informed of major decisions being made by the DEQ. She read about the decision to abolish the Impact Assessment Bureau in the newspaper. His letter to the EQC was dated November 13th. A decision was made November 8th. Why was the EQC left out of the information loop?

**Director Simonich** replied that the decision was made on October 28th. He communicates with the EQC staff on a regular basis. However, at times he has not provided information as quickly as it should have been and he apologized for that. The decision needed to be made quickly. He will make a conscious effort of reporting to the Council on a more timely basis in the future. In 1995, the EQC chose a fairly low level of oversight over the DEQ reorganization process. SEN. GROSFIELD made the statement that the executive branch should be allowed to do their job.

CO-CHAIR COCCHIARELLA stated that she has concerns about hearing only one side of a story. She intends to ask the Council to approve an audit of allegations, compliance, performance, etc. There is a performance audit being conducted in permitting. Fear of retaliation and retribution is real and always exists. There was a person from a different agency who did not attend last night's meeting because he was afraid to be seen here. She asked **Director Simonich** if he has ever taken the Sen. Baucus approach to spend a day working at a front line employee's desk.

**Director Simonich** remarked that he always appreciated Sen. Baucus' approach. He has been a front line employee and appreciated when that was done for him. The DEQ staff is a highly trained technical staff. His responsibilities often keep him from participating with staff as he would like to. He meets with a variety of staff frequently on a variety of issues.

CO-CHAIR COCCHIARELLA continued that it would be good if Council members were allowed to spend some time with DEQ staff. She thought it would help to hear what is really happening in the front line jobs. She felt that some of the stress and pressures are brought about by trying to respond fairly and even handedly to all elements of the public. She further remarked that the Council would like to have more staff involvement in the reports to the Council.

**Director Simonich** commented that he did not discount a fear of retaliation or retribution. Within management, they do not retaliate against employees. He encouraged having Council members spend time with the DEQ staff. He stated that the people who work for state government are tremendous individuals who have a very difficult job. They take a great deal of heat when they do not need to do so. They will always cooperate fully with any legislative inquiry into department matters. There are a variety of DEQ staff members who have met with the subcommittee last night and will be meeting with the full Council today. He has worked with MR. EVERTS to make sure that the management team within the Department is able to coordinate these efforts so that the EQC is provided with the expertise needed. He is also concerned that the DEQ staff be allowed to continue to accomplish their daily responsibilities.

CO-CHAIR MESAROS remarked that the EQC is not attempting to micro manage the daily activities of the DEQ. The Council is mainly interested in oversight and ensuring that legislative policy is being implemented.

**Director Simonich** remarked that he recognized the need and importance of the EQC, and the entire legislature, to be able to understand DEQ activities and have a comfort level that the responsibilities are being

performed appropriately under the statutes. When that comfort level is achieved, the skepticism the public has will be settled.

2. *DEQ's MEPA Implementation Policy - Tom Ellerhoff, DEQ*

**Mr. Ellerhoff** remarked that he had provided the EQC with a memo explaining the DEQ MEPA Guidance issue, **Exhibit 2**. The purpose of producing department guidelines is administrative.

REP. HEAVY RUNNER stated that **Director Simonich** told him he had no problem in using the Dept. of Forestry guidelines as the blueprint to develop a comprehensive document in the DEQ with respect to MEPA.

**Mr. Ellerhoff** stated they would use the Dept. of Forestry guidelines and also review guidelines of other state agencies.

SEN. MESAROS asked if a time line had been set.

**Mr. Ellerhoff** replied that the memo stated that a draft would be completed in May or June. This would be followed by staff comments. A final draft should be ready by fall and in place by next December.

SEN. MESAROS asked for instances when they would use MEPA substantively.

**John North, Chief Legal Counsel for DEQ**, explained that there are court cases which define whether MEPA is substantive or procedural. Under the Hard Rock Mining Act there is no authority for the Department to condition or deny an application based on wildlife impacts. Wildlife impacts must be considered if the agency prepares an EIS. If the EIS determines there are significant wildlife impacts and MEPA is procedural it would not provide authority for the agency to do anything about the impacts. If MEPA is substantive, it does. A district court opinion has stated that MEPA would be considered a substantive Act for purposes of permitting under the Hard Rock Act. Because of the close similarities between the Hard Rock Act and the Strip Mine Act, the agency has considered MEPA to be substantive under the Strip Mine Act as well.

When MEPA conflicts with the specific provisions of a permitting statute, MEPA gives way and the permitting statute controls. In Beaver Creek South, the Supreme Court decided the issue on the adequacy of

the EIS on a subdivision at Big Sky. The Court determined that the agency had not erred in preparing its EIS. The Sanitation in Subdivisions Act only relates to public water supply, sewage, and solid waste. In this case, MEPA is applied procedurally.

There are no court decisions to determine whether MEPA is substantive or procedural for the Water Quality Act, Air Quality Act, and Hazardous Waste Act. Legislation has been introduced, but has not been passed. Since this is a question of statutory interpretation and case law is evolving, the most prudent course is to review the state of the case law at the time an issue arises.

MR. TOLLEFSON stated that since the DEQ is responsible for enforcing the environmental laws of the state, it would be important to have a MEPA implementation policy in place.

### **PUBLIC COMMENT**

**Jim Jensen, Montana Environmental Information Center**, presented a copy of an article from the Missoulian, **Exhibit 3**, which described a problem at the Rock Creek ASARCO Mine project. This involved the falsification of scientific information provided by the state's consultant on the EIS. He stated that it was important for the Department to explain why scientific analysis was falsified. The Governor commented last night that he found nothing but favorable recommendations in a personnel file of the employee who falsified this information. There was no accountability imposed on this employee. The Governor criticized people who criticized the government. The EIS in the Golden Sunlight Mine project was prepared illegally. They will need to go to court to get this information, but it is the only way the public will have an opportunity to make informed comments on this draft EIS.

**George Ochenski** remarked that he was a member of the Natural Resources Reorganization Oversight Task Force. They were caught in a blizzard of organizational charts which shifted frequently. After a few months, they were dismissed. The members asked to be reconvened to oversee the progress of the organization. They were never contacted.

**Bonnie Gestring, MEIC staff**, remarked that they had information that there were conflicts between the Department and the consulting firm and that they were considering firing Morrison/Maierle. She checked the public files and did find some allegations from other agencies questioning Morrison/Maierle's ability to perform the work. There was no information from either the Department or Morrison/Maierle in the files. She was informed that the president of Morrison/Maierle had written a substantial memo which should be in

the files because it was dated February 10th. She had started looking for the information in June. Subsequently, she went to Claudia Massman and asked to see all the personal files of all agency people who had been working on the project. She found nothing in the files. She requested the memo from Deputy Director Chisholm. He told her to go back through the files. She insisted that he ask **Director Simonich** the whereabouts of the memo. Deputy Director Chisholm provided her with the memo and stated that it had been on **Director Simonich's** desk. This memo is very critical of DEQ's work on the McDonald Gold EIS. It paints an unfavorable picture of their management. She is convinced that the files are screened.

**Julia Page, Northern Plains Resource Council**, stated that they supported the reorganization plan but it has turned out to be a disappointment. Enforcement seems to have ceased to exist in the Department. The DEQ waits for pollution to occur and then asks the polluter to apply for a permit. Public health and environmental quality cannot be protected unless the laws are backed up by fair and consistent enforcement. When violators are not punished for breaking the law, there is no incentive for the regulated community to comply with the law. There are violations of the Water Quality Act at the Kendall Mine by the previous owner as far back as 1985. Golden Maple left the state leaving behind over \$42,000 in unpaid fines. In 1991, the current owner has had eight documented cyanide leaks at the mine. One violation repeatedly cited at the Kendall Mine has been the placement of waste in locations likely to cause water pollution. There needs to be a bottom line if there is going to be effective environmental regulation. Additional handouts, **Exhibits 4 and 5**.

**Les Hammond** commented that he lived down wind from a hog factory which housed 1,160 sows and will produce 60,000 piglets per year. The factory came into the neighborhood without asking any of the neighbors if this would create a problem. The owner told them he would correct the stench problem. It has become worse. His employees pumped waste onto neighboring property at night. Dead pigs were allowed to decompose around the site. The factory stopped operating in 1993, but reopened last October. The DEQ issued the factory a general permit for concentrated animal feeding operations. They conducted a checklist EA and said the factory would have no impact on its neighbors. The complete opposite is true. The DEQ has allowed them to violate the water quality standards by granting them a mixing zone. Pollution will be allowed to contaminate ground water unchecked for one to one and a half miles from the hog factory into the Big Horn River. The DEQ should stop refusing to punish polluters who violate Montana's water quality standards. **Exhibit 6**.

**Kevin Keenan, Montana Public Employees for Environmental Responsibility**, stated that he was working on a project for a client last summer. He had filed a written request with the DEQ to be notified of

all meetings on the subject. The case was transferred from the Enforcement Division to the Remediation Division. There was no reason for the transfer in the file. He asked for the details. They did not receive an answer.

**Wade Sikorski, Southeastern Montana Alliance**, stated that Ross Electric, which is a responsible party to two National Priority List Superfund Sites in Washington, came to Montana to avoid strong environmental regulation. A few years ago Ross Electric was using transformer oil to fuel their trucks. Transformer oil contains PCBs, which are very toxic. The DEQ allowed Ross Electric to continue operating while the company filed applications. They have filed two applications to run a waste recovery facility that the DEQ has found inadequate. A company that was so bad it was virtually banned from operating in Washington is now being allowed to operate in Montana illegally while it files application after application. Their record does not justify this generous policy for a known polluter. **(Exhibit 7)**

**Roger Chalmers, Alberton Community Coalition for Environmental Health**, remarked that Montana Rail Link hauls toxic chemicals and, thus, the DEQ should be directly involved with the railroad. He asked the Council to look at the 1996 Alberton Train Derailment and Chemical Spill. There are still over 200 people who have not settled with the railroad and are not living in their homes. The homes are toxic. The DEQ involvement and oversight in this problem has been almost non-existent. **(Exhibit 8)**

**Paul Roos** commented that the problems being discussed are systemic. A survey would be skewed and ineffective in helping resolve continuing questions concerning the DEQ's quality of work in serving Montana. A full scale independent investigation commissioned by the EQC may be a path out of this non-ending contentious issue.

**Director Simonich** requested that the DEQ be given an opportunity to address the issues presented this morning at a future time.

3. *Status of DEQ's response to the EPA regarding Environmental Self Audit implementation*  
- John North, DEQ

**Mr. North** stated that the DEQ received a letter from EPA on November 20th which asked 16 legal questions regarding the Montana Environmental Audit Act, **Exhibit 9**. The letter was sent both to the Governor and the Attorney General. It asked for one opinion. The DEQ will handle the initial research. They will talk to Tim Meloy, Attorney for the Department of Agriculture, since the Environmental Audit Act

applies to programs administered by DEQ and the Department of Agriculture. They will work with Harley Harris, an assistant attorney general in the Attorney General's Office to come up with responses. The responses will be sent to the Attorney General and the Governor. Hopefully, a joint letter can go back to EPA signed by both the Governor and Attorney General. A draft should be submitted to the Council by mid-March at the latest.

4. *Environmental Enforcement and Compliance Reporting System Update -  
John Arrigo, DEQ*

**John Arrigo, Administrator of the DEQ Enforcement Division**, presented the Council with the annual status report which includes the enforcement activities which occurred during the calendar year 1997, **Exhibit 10**. The Division tracks citizen complaints and spill reports as well as actual enforcement cases which include administrative orders issued by the Department. They received 1,170 citizen complaints and reports of spills for 1997. They investigate a complaint to determine if a violation is occurring. Currently 300 complaints are being investigated by the Department. The other complaints have been resolved, closed or referred to another agency which has jurisdiction. Enforcement has been accomplished with an incomplete staff. Compliance is their goal but they are willing to swing the enforcement hammer when necessary. The Open Cut Mining Act has regulations which prescribe enforcement procedures. The Public Water Supply Act has administrative regulations which describe the penalties. They have drafted regulations for administrative penalties under the Water Quality Act and the Underground Storage Tank Act. They are amending the regulations under the Open Cut Mining Act and the Metal Mine Reclamation Act to adjust their enforcement procedures. They have a model enforcement process which they follow.

MS. SOUVIGNEY asked if significant violations were reported elsewhere.

**Mr. Arrigo** explained that each program has to develop criteria to determine a significant violation. They follow EPA criteria where applicable. The report this fall will reflect significant violations.

MS. SOUVIGNEY asked if they had a formal enforcement policy in place.

**Mr. Arrigo** stated they have developed a model enforcement process. The Enforcement Division is a new division. They inherited a variety of procedures established in statute as well as in policy and guidance.

SEN. GROSFIELD asked if enforcement would be more aggressive and timely in the future.

**Mr. Arrigo** stated they needed to work within the existing authorities and programs. They have identified possible legislative changes which would help facilitate effective enforcement. They have an enforcement agreement with EPA which will help determine what constitutes timely and appropriate actions and penalty policies.

5. *Sufficiency of Bonding for Mining Operations in Montana -  
Angie Grove, LAD and Art Compton, DEQ staff*

**Angie Grove, Legislative Audit Division**, stated that they received requests to look at the Hard Rock reclamation bond requirements. Their review focused on compliance with current statutes. One of the primary questions they answered was: Is the current reclamation bond methodology used by DEQ in compliance with the law? They found that they were generally in compliance. They also found that the current bond calculations were consistently applied on all operating permits.

They were asked to examine the methodology used for Pegasus Mine operations. They found there were six operating permits issued to Pegasus Gold and they found the bond amounts were consistent with the methodology used by the Department.

They were also asked about the terms of the Zortman/Landusky Agreement, in regard to the consent decree signed in July of 1996. They found four bond agreements and a trust agreement. The handout lists these agreements as well as the bond amounts, **Exhibit 11**. They were further requested to look into provisions for exposed rock faces and pit walls. They found there were provisions. They were asked if the rock faces would create a potential acid rock drainage. They found they would and the plan required minimizing the impacts of that.

The final question was whether the current bond amount at Zortman was based on the planned expansion. They found the current bond is based on the previous operating permit but they have calculated a new bond amount for the expansion.

She stated that the Legislative Audit Committee has requested an audit of the permitting and compliance division at DEQ. That has been scheduled for early this year. This will be a performance audit. They have not finalized the scope of this project.



MR. TOLLEFSON asked if there was sufficient safeguards built into the bonding mechanism to assure that at a point of bond forfeiture, the bond could be called in.

**Ms. Grove** replied that the statute talks about time frames and procedures for forfeiture of the bond. They examined the language of the bond.

SEN. BROOKE questioned if interim site management and maintenance costs would be an expense to the state.

**Ms. Grove** stated that the bond methodology did not have costs including that. If the expenses were incurred, money would not be set aside for that.

SEN. BROOKE stated that Pegasus Gold has applied for an expansion. She asked if it was clear under what reclamation plan the Zortman Mine is operating.

**Ms. Grove** stated they are working under the new reclamation plan which incorporates the old reclamation plan and has provisions for the expansion.

**Art Compton, Environment Management Bureau**, stated that mining was suspended in September of 1996. The expansion has been approved. There was reclamation work going on before the expansion was appealed to the U. S. Dept. of Interior Board of Land Appeals. The work is stayed by the appeal. They have an issue with Pegasus in that they believe reclamation should be proceeding on certain facilities which have not been disturbed for two years. Pegasus has taken the position that the reclamation work is also stayed by the IBLA appeal. There is no threat to the environment.

SEN. GROSFIELD questioned whether after the audit, the Department would include an interim operation and maintenance line item in every reclamation bond reviewed.

**Mr. Compton** stated they have reviewed four bonds since the auditors concluded their work and have included a new line item in this area on each of the bonds. Attachment 3 in **Exhibit 12** explains how this is accomplished.

SEN. GROSFIELD asked if the scope of the Permitting Division audit had been set and also when the next Audit Committee meeting would be held.

**Ms. Grove** stated that a tentative audit scope had been set. The Audit Committee will meet next Friday. She stated that if the Council had issues for consideration, she would present them at the meeting.

6. *Abandoned Mine Program Letter of Support*  
*Vic Andersen, DEQ*

**Mr. Andersen** asked the Council to support increasing the appropriation for taxes being levied. He referred to a packet which he had sent to the Council members, **Exhibit 13**. There is approximately \$30 million in Montana's share account in the Abandoned Mine Program. He has been working on a resolution with the Association of Counties. The Abandoned Mine Program has a budget of \$3.5 million per year.

SEN. GROSFIELD asked if they want a lump sum or a certain amount each year.

**Mr. Andersen** stated the money would be spent in two or three years. They would use the money for mine cleanups. They have a staff of six FTEs.

**Motion: MR. TOLLEFSON MOVED THAT THE COUNCIL SUPPORT A RESOLUTION TO INCREASE THE APPROPRIATION FOR THE ABANDONED MINE PROGRAM.**

**Discussion:**

REP. HEAVY RUNNER asked how the Tribes would be affected by this program.

**Mr. Anderson** stated the Tribes were funded the same way as states.

CO-CHAIR MESAROS asked how many sites were identified for reclamation.

**Mr. Andersen** stated there were about 275 hard rock sites. This is a program funded by a tax on coal. The Montana program has certified that it has completed all the high priority coal related problems. If a coal related problem surfaced, it would be top priority. This program is 100% federally funded.

**Vote: THE MOTION CARRIED ON ORAL VOTE.**

V. **ENHANCING THE VOLUNTARY COMPONENT OF POLLUTION CONTROL AND PREVENTION IN MONTANA - A CRITIQUE OF THREE OPTIONS:**

**MS. WILLIAMS** stated that this seminar was planned based on concepts which were of interest to the Council. Following the seminar, the Council should be able to clarify which topics they wished to pursue. During the Compliance and Enforcement Study last interim the staff was asked if any programs they reviewed would be candidates for voluntary BMPs. The response was limited. The first part of today's seminar deals with how to enhance the voluntary components of environmental protection in Montana.

*Emissions Trading - John Horwich, Law School, University of Montana*

**Mr. Horwich** stated that emissions trading is a system designed to allow the regulated community to establish, in part, where and upon whom emissions limits are imposed. The marketplace assists in allocating the regulatory burden. A given amount of pollution control is achieved at the lowest possible cost. He gave an example, **Exhibit 14**, wherein ten sources had an aggregate total of 150 tons of volatile organic carbon (VOC). If each of the sources were required to reduce the discharges by one-third, this would bring the aggregate total down to 100 VOCs. The cost per ton of reducing VOC emissions would likely be different for the sources because they would be in different industries. A state agency could evaluate the economic and technological feasibility of emission reductions for each of the ten sources. This would result in new emissions standards based on feasibility in an effort to share the burden on a fair and equitable basis. The theory of emissions trading is to allow the regulated community to allocate the regulatory burden in the most efficient manner possible. In the example, each of the facilities would be authorized to emit up to the amount of VOCs in the proposed column. The sources would thereafter be free to buy and sell tons of VOC emissions from each other. If source 1 found that a ton of VOC control would cost \$100,000 per ton and source 4 found that it can control a ton of VOC at a cost of \$20,000, it would behoove source 1 to purchase the right to emit eight more tons of VOCs from source 4 at a cost of between \$20,000 and \$100,000 per ton. If a deal was struck, source 1 would not need to reduce its VOC emissions at all and source 4 would have to reduce its VOC emissions to 18 tons.

The 8 ton reduction from source 1 would cost \$800,000. Source 4 would incur a total cost of \$260,000. The total cost for the two facilities would be \$1,060,000 to achieve their VOC reductions which would mean an average cost per ton of \$50,476.

If a deal is struck between sources 1 and 4 for source 1 to buy 8 tons of VOC emissions at \$50,000 per ton from source 4, source 1 would incur a cost of \$400,000. Source 4 incurred an additional 8 tons of reductions

at a net cost of only \$20,000. The total cost for the two facilities would then be \$420,000 or \$20,000 per ton. This would be a savings of \$30,476 per ton and gross savings of \$640,000.

In general, trading has to be pollutant specific. The source does not matter. Trading must be confined to the geographic area of impact. Pollutant trading schemes require structured documentation and means of verification. The state needs to know when one party has transferred rights to pollute to another party. This would need to be reflected in the permit so the new limits are legally enforceable and can be monitored.

Emissions trading should reduce the net costs of controlling emissions and should create an asset for those who control emissions in a more cost effective manner. This should increase efficiency. Emissions trading should encourage research and development of more efficient and effective means of controlling emissions with the creation of economic incentive.

An environmental group might purchase tons of VOC emissions with no intention of emitting the VOCs and retiring them forever.

REP. BEAUDRY remarked that emissions trading would speed up compliance.

*Green Certification - Kath Williams, MSU Green Buildings Program*

**Ms. Williams** stated that green certification is the idea of joining industry and the environment to construct buildings which are sustainable for the future. MSU secured a grant in 1994 to design a green building. There are two organizations which certify green products. They are Green Seal and the Scientific Certification System. The city of Austin, Texas is a model for green buildings and the procurement of green items. The U.S. Green Building Council is a consensus based organization where industry, environmentalists and universities talk about how to work together to form a consensus building partnership. The U.S. Green Building Council has 150 of the largest industries in this country as members. Her goal is having Montana join the Council.

One of the goals of the Council is to emphasize the Leadership in Energy and Environmental Design (LEED) rating system. Green buildings are not a new concept. They looked at theaters from ancient Greece which were acoustically designed correctly. If we look at products from cradle to grave, there will not be an asbestos problem facing us in the future. This process involves the use of natural systems to clean the water, the waste and the air. The first green buildings were built in Turkey and were built thousands of years ago.

The LEED rating system is being developed in a consensus model. An agency can regulate all it wants, but if people are not educated, there is little hope for a future of non-pollution.

SEN. MCCARTHY asked what it would cost for Montana to join the U.S. Green Building Council.

**Ms. Williams** stated it would be less than \$1,000. The fee is based on population. Handout - **Exhibit 15**.

*ISO 14000 - Michael Vogel, Montana Pollution Prevention Program*

**Mr. Vogel** stated that ISO was an acronym for the International Organization of Standardization. ISO 14000 deals with environmental management standards. This is a voluntary standard. The highlight is to deal with restricted non-tariff types of barriers. This benefits those interested in international markets. ISO 14001 is guidance for a written plan which is put together by a business to explain how they are operating in the environmental arena.

A business would start with a written policy which shows their commitment to the compliance and regulation in pollution prevention. The process is reviewed on an annual basis by a third party. An advantage to this program would be maintaining a competitive edge. Handouts were presented to the Council members which further explained ISO 14000 standards, **Exhibits 16** and **17**.

This program is just being developed in the United States. The United States is behind other countries in initiating ISO 14000. Currently there is no documented activity in ISO 14000 in EPA Region VIII. There are ISO 9000 samples. Montana's small businesses may not have the time nor the money necessary for this process. The average cost to become certified is about \$24,000. The cost is reflected in hiring a third party to submit the documentation. This program is of interest to businesses which market internationally.

There is a multi-state work group headed by the Wisconsin Department of Natural Resources. The next meeting is in San Francisco in February. Thirteen states are involved with this ISO 14000 multi-state work group.

SEN. BROOKE, referring to the cost associated with the new approaches, asked what incentives there would be for business to look into these movements.

**Mr. Vogel** stated that in Montana there was a program called Eco Stars. This is an incentive program for businesses to use and utilize practices which encourage waste minimization, source reduction, and recycling as well as consumer education. Last year there were 32 business in Montana which were identified as Eco Star businesses. They are promoted by public service announcements and newspaper articles. In the recycling area, there are collaborative partnerships by DEQ and county and local governments.

**Ms. Kath Williams** stated that one of the things the businesses are looking for is tax breaks and financial incentives from the government. They are particularly interested in recognition. At a recent meeting of the U.S. Green Building Council, Interface, Inc. presented a corporate confession. This is an annual report of their pollution on a worldwide basis. The report shows what the current status is and how they are going to correct the problem. They called on all industries to do the same.

REP. BEAUDRY, referring to the 2000 year old Greek buildings, asked **Ms. Kath Williams** how they obtained the building products and whether they mined the products.

**Ms. Kath Williams** explained that mining was included and that they basically used products found in the area. They also reused products. Green building is not just environmental. There is nothing wrong with using a wood product in a green building.

*B. Perspectives and Suggestions*

**Louise Moore, DEQ**, remarked that ISO 14000 should be followed. It is very young and is limited to businesses who are working internationally. Green certification is beneficial by getting information to the consumer. The consumers can drive the marketplace. The state government should be a leader in green procurement.

**Michael Vogel, Montana Pollution Prevention Program**, stressed the need for education especially in the area of pollution prevention rather than treatment, control and clean up. The environmental benefits are profound.

**Kevin Keenan, Public Employees for Env. Responsibility**, remarked that most of these concepts are not new. He has a concern about using the voluntary component with these projects. Environmental laws are mandatory and not optional. The incentive to do the right thing is the law.

**Gail Abercrombie, Mt. Petroleum Assoc.,** remarked that there had been interest in emissions trading in Billings, but nothing is being done at this time. ISO 14000 is mainly for businesses trading internationally, however, the concepts have applications within various companies and facilities.

**Patrick Heffernan, Timber Industry,** remarked that the state TMDL process involves emissions trading. If people use wood products to construct buildings, industry helps the environment with its carbon equation. The key to the success of these products is market incentive. If the consumer makes a choice to buy an environmentally friendly product, industry has an opportunity to expand into the field.

**Tina Diebold, U.S. EPA,** remarked that the emissions trading program is a cost effective way to reduce water pollution. In North Carolina, water treatment plants pay into a state fund which supports best management practices at farms and thereby they are able to obtain their water quality goals with less expense than having each facility upgrade. EPA has started a two year partnership program with eight states where they are testing voluntary environmental management systems based on ISO 14000. These are facilities which are regulated under the Clean Water Act. Some states are considering decreasing the frequency of environmental inspections for the facilities which voluntarily seek ISO 14000 registration. ISO 14000 goes way beyond compliance. Wisconsin and Pennsylvania are working to get favorable lending and insurance rates for companies that seek any kind of environmental management system registration. In Colorado, the governor compiled a list of companies and publicly challenged them to improve their environmental performance.

**Anne Hedges, Montana Environmental Information Center,** remarked that ISO 14000 is a good concept with a lot of merit; however, it also has a lot of pitfalls. Industry consultants are telling industry that it is a quiet revolution and a clear alternative to existing command and control regulatory systems. EPA is saying that ISO 14000 is not a technical standard and does not in any way replace technical requirements embodied in statutes. There is a very large difference between the two statements. ISO 14000 is to be used only as a management tool. It does not and should not replace technical standards. Management establishes the company's environmental policies. Neither the public nor regulatory agencies are involved in this decision making process about the nature and scale of the impact on the environment. This is an internal process for internal purposes. Before this concept is embraced, both regulators and the public should be involved in deciding the environmental impacts of the company to include the impacts which need to be mitigated. ISO 14000 is a good, international step forward. However, it has not received the public scrutiny which it needs.

The MEIC does not embrace ISO 14000 and does not believe that Montana or the United States should embrace it until it has been scrutinized by public and regulatory agencies.

ISO 14000 moves us in the right direction towards pollution prevention. Emissions trading assumes that if one company can achieve pollution prevention and reduce its emissions, then another company should be able to take advantage of this situation and increase or maintain their pollution. There is no incentive for pollution prevention. Emissions trading does not account for localized concentrations of pollution. Persons living around one facility are subject to higher concentrations of pollutants than persons living around other facilities which are implementing pollution prevention.

**David Gerard, Political Economy Research Center**, stated the first question to ask when implementing a policy is what are the incentives for the parties involved. If green buildings are cost effective, this concept will be successful.

**David Owen, Chamber of Commerce**, stated their ultimate frustration is how clean does the environment need to be before it is healthy. He liked using the marketplace to create incentives. He stated that the basis of good law is not enforcement, because you cannot hire enough cops. The basis of good law is the perception that you ought to behave.

**Don Allen, Western Environmental Trade Association**, remarked that emissions trading has a lot of promise. Regarding ISO 14000 and green certification, he commented that something which will happen in the future should not be substituted for what is readily available.

## **VI. OPEN FORUM FOR PUBLIC CONCERNS**

**Roger Chalmers, Alberton Community Coalition for Environmental Health**, asked the Council to review their situation on the train derailment and chemical spill. CO-CHAIR COCCHIARELLA will facilitate a meeting between **Director Simonich** and **Mr. Chalmers**. He requested that this problem be reviewed by the Council in the future.

**John Smart, Environmental Photographer**, referring to the Zortman/Landusky Mine, stated that this project should be used as a case study to verify that neither science nor the law has been intelligently applied to this environmental disaster. Who will pay for reclamation? Is the bonding sufficient? The mine was opened without a formalized EIS. The current lawsuit was brought against Pegasus by the citizens of Montana and



not the state. The citizens had to enforce the law. Citizens will be facing perpetual pollution and water treatment problems at the site. As long as the rain falls, there will be water pollution problems. He photographed a stock tank a mile away from the mine site which was erupting heavy metals. No one is addressing the issue of contaminants moving underground. The issue of bonding needs to be reevaluated at this mine site.

He had been a state employee for 12 years and believes retribution is very common. He stated that HB 485 was initiated by Pegasus Gold. The result of this bill was the dismemberment of the State Historic Preservation Office. The person serving as the preservation officer was forced to step down. People in that office live in fear of retribution should they do something that is not in compliance with department policy.

The only way to get to the bottom of the DEQ situation is to set up an independent audit with complete protection for the DEQ employees.

**Jill Andrews, Montana Mining Association,** stated that the EQC staff asked her to review the material regarding sufficiency of bonding for mining operations in Montana. She polled her membership and received generally favorable responses. With only one exception, the bonds in place exceeded the cost estimates of reclamation. In the one that didn't, the company decided to do more than was required and is spending more money. Maximum bonds should be based on the maximum disturbance at any one time. This provides an incentive for companies to perform concurrent reclamation and keep their bonding costs down. This also restores the land more quickly.

There is a sense in the mining industry that there is a real effort by DEQ to cooperate and respond in a more timely manner. They don't always get what they want or what they need, but they believe they are being treated more fairly and that progress is being made.

**Kevin Keenan, Montana Public Employees for Environmental Responsibility,** asked the Council to review a report on the DEQ enforcement program which he released in conjunction with Northern Plains Resource Council. Enforcement and MEPA policies and procedures have been in the drafting stages for almost two decades. The success with completing tasks usually lies in the amount of priority the task is given. If DHES/DEQ wanted violation significance criteria, they would have had it 15 years ago. The rank and file employees at DEQ are hard working and committed people. His criticisms go directly to the Governor, the Director and the Deputy Director of DEQ.

MEPA policy has been slow to develop due to industry pressure not to prepare EISs. Checklist EAs can be completed in 30 minutes.

**VII. DEPARTMENT OF FISH, WILDLIFE AND PARKS EASEMENT ACQUISITION**  
**PROGRAM - Commission Chairman Stan Meyer and Easement Acquisition Program**  
**Manager Deb Dils**

**Ms. Dils** referred to a January 5th memo from Director Pat Graham which had been sent to the Council members, **Exhibit 18**. In the last 20 years, over 3 million acres of ag land has been converted to other uses. This trend will probably accelerate in the future. This has resulted in a loss of wildlife habitat, public hunting, and agricultural tax base. During the 1993 Legislative Session the Commission agreed to a program of conservation easements. In 1994 the statewide habitat plan established the specific criteria and procedures to be followed by the agency. Before any acquisition is approved by the Commission an environmental assessment, management plan, and socioeconomic impact analysis is completed for public review and a public hearing is held in the nearest community. All easement proposals are reviewed by the local planning authority. Easements are only negotiated with willing landowners who share an interest in preserving conservation values of their property. The terms of the easement restrict the type, amount, and location of future development on the land and oftentimes provide for limited public access for hunting, fishing, or other recreational uses. Game farms and outfitting by the landowner are prohibited. Normal agricultural activities are specifically allowed to continue in a manner intended to preserve the agricultural viability of the property and protect wildlife habitat. The land remains private property and the local tax bases are maintained.

Since 1987, the agency has completed 23 conservation easements for wildlife habitat. The total acreage under conservation easement managed by FWP is approximately 119,000 acres. In the 1997 Legislature a bill was introduced to prevent the state from negotiating easements in perpetuity. This would allow the landowner to receive payments and to defer development and provide an opportunity to develop the land in the future. This bill was killed in committee. At the present time, they can grant conservation easements for a minimum term of 15 years. They have not negotiated anything other than perpetual easements. Only perpetual easements can provide federal and state tax benefits. They view temporary easements as an expensive lease without any long term guarantees that the land will be left as open space at the end of the easement term.

**MR. TOLLEFSON** asked if most of the easements were generated by the regional priority lists.

**Stan Meyer, Commission Chairman**, remarked that when they get one family easement, it opens the door to many queries. They are faced with more requests than they could fund or are interested in acquiring. In most cases, they look at critical wildlife habitat.

MR. SORENSEN asked about the ongoing costs to the state in the area of administration of conservation easements.

**Mr. Meyer** stated they didn't have a track record because most of the easements have been acquired in the past few years. The fund generates about \$2.75 million a year of which \$2.4 million is segregated for acquisition and the balance is set aside for maintenance. The Commission and the Department are working on plans to make sure they are getting the baseline data properly certified and agreed upon between the landowner and the Department.

SEN. MCCARTHY asked if subdivision development was one of the reasons for conservation easements.

**Mr. Meyer** replied that was the primary threat to wildlife habitat and continuing agricultural operations.

SEN. GROSFIELD stated the money for this program comes from sportsman dollars. He asked for the total amount of tax break dollars involved.

**Mr. Meyer** stated that in the case of the Hirschey Ranch, FWP bought an easement on 11,000 acres and the Hirschey Ranch donated an easement on 10% of the ranch. That would have given them a tax break. The primary tax break comes when there is an estate to settle. With an easement the land is valued at an agricultural rate.

MR. TOLLEFSON stated the Department does not pay full appraised value. Donated easements provide a substantial tax benefit to private landowners.

CO-CHAIR MESAROS asked when the primary focus would shift from livestock production to wildlife production.

**Mr. Meyer** stated that the ranch has to maintain its economic viability based on the ability to produce cattle. He is not aware of any instance where wildlife values would be placed ahead of cattle.

CO-CHAIR MESAROS asked how one can place a value on perpetuity. MR. TOLLEFSON stated that we do not know what perpetuity will mean as far as the law is concerned 100 years from now. This gives our grandchildren and great grandchildren the opportunity to make a choice about the land.

SEN. BROOKE ask for an update on the department's plans to purchase an easement on Rep. Grady's land.

**Ms. Dils** stated they were in the public review process of the EA comment period. A public hearing will be held in Helena. Assuming the public comment is positive, they will go to the FWP Commission for approval or denial. They had an agreement with the Grady family for \$350,000 for a term of five years. The Grady family has agreed to make that a perpetual conservation easement.

**Mr. Meyer** stated there was a negotiated agreement of \$2,350,000 of which the \$350,000 which was paid for the five year lease would be credited toward the total. The Grady family would be paid \$2 million for an easement into perpetuity, this would equal \$182 per acre.

REP. OHS asked if the landowner was able to keep development rights on the conservation easements.

**Mr. Meyer** stated that in most cases they were keeping an opportunity to build from one to four home sites in locations which are identified in advance and are not critical to the wildlife values of the ranch.

SEN. BROOKE asked if there had ever been a discussion about a conflict of interest with the Grady family conservation easement.

**Mr. Meyer** stated that the landowner is a faceless person which he has seen at one meeting. He is interested in the land. He is concerned that there is a state highway running through the land and there are also county roads as well. The land is subdividable.

## **VIII. SUBCOMMITTEE REPORTS**

### *1. Growth Subcommittee - Co-Chairs*

**Mr. Sorensen** stated the Growth Subcommittee met the day before. They viewed a video from the Department of Commerce on a citizen's guide to planning. This covered all the tools necessary for pro- active planning. Nick Kaufman, a private planner in Missoula, and Don Chance, Homebuilding Association, presented insights about housing problems in Montana. A realtor from Missoula discussed trying to work

with the growth management system in Missoula to accommodate more affordable housing. Phil Worth, a rancher from Wolf Creek, provided some insights on developing property in the Helena Valley. A consultant from Bozeman had interesting perspectives on how Montana could move forward and avoid some of the problems California experienced. Mr. Kaufman remarked that one of the disincentives for good land development which is also affordable, is the DHES regulation that you need an acre for a drain field. He suggested drainfields on an aerial distribution of one acre, but placing them all in one part of an area and allow smaller lots in the other part of an area.

The committee reviewed the results of their survey. They are still in the information gathering stage. The next meeting will involve a full day work session. They will prepare a work plan which will be presented to the full Council at the next meeting.

2. *Water Policy Subcommittee - Co-Chairs*

SEN. MCCARTHY stated they heard a variety of interesting presentations at their meeting which was held the day before. She presented a copy of their work plan to the Council members, **Exhibit 19**.

SEN. MCCARTHY further stated that they have been asked to co-sponsor a watershed coordination and planning meeting in February. The sponsorship would not require a cash donation, but would require staff time for planning and coordinating the meeting and help with mailings. Other co-sponsors are the statewide TMDL Advisory Group and the Watershed Coordination Council.

CO-CHAIR COCCHIARELLA stated that if they are co-sponsors, the full Council needs to receive notification of the meeting.

**Motion/Vote: MR. TOLLEFSON MOVED THAT THE EQC CO-SPONSOR A WATERSHED COORDINATION AND PLANNING MEETING IN FEBRUARY. THE MOTION CARRIED ON ORAL VOTE.**

**Ms. Williams** summarized TMDL-related requests from the DEQ. The Subcommittee was told that the watershed planning efforts related to TMDL implementation require monetary and facilitation efforts. The subcommittee and full Council members are invited to all meetings of the Statewide Advisory Group. She further commented that they are considering a TMDL field trip in Dillon. Their next meeting will be held the day before the full Council meeting.

SEN. GROSFIELD stated that SEN. CRISMORE had a concern related to fish propagation. CO-CHAIR MESAROS explained that this concern has to do with the recovery of the bull trout.

MR. EVERTS suggested that the CO-CHAIRS of the Water Policy Subcommittee and staff work with SEN. CRISMORE to determine whether this issue should be pursued by the Water Policy Subcommittee.

## **IX. NEW BUSINESS**

**Motion: CO-CHAIR COCCHIARELLA MOVED THAT MR. EVERTS WORK WITH THE CO-CHAIRS AND ANGIE GROVE, LAD, TO DEVELOP A LIST OF QUESTIONS TO BE INCORPORATED INTO THE PERMITTING BUREAU AUDIT AND REPORT BACK TO THE EQC BEFORE THE NEXT SESSION.**

CO-CHAIR COCCHIARELLA stated that the Audit Committee is a constitutionally independent agency which has separate and total control over their audits.

SEN. GROSFIELD supported the motion. He referred to the Government Auditing Standards, which stated that a performance audit is an objective and systematic examination of evidence for the purpose of providing an independent assessment of the performance of a government, organization, program, activity or function in order to provide information to improve public accountability and facilitate decision making by parties with responsibility to oversee or initiate corrective action.

He stated that there were three general topics he would like addressed. He would like this audit to seek and disclose any material instances where management activities or directives are not in compliance with state or federal law. Another topic would involve public disclosure. The Hard Rock audit, which was performed a couple of years ago, commented on the filing system. He thought it would be appropriate to follow up on this to see if the filing system had been improved. The third topic would address employee turnover and/or morale at DEQ.

MS. SOUVIGNEY asked if the audit would include the entire department.

SEN. GROSFIELD explained that the audit, which has been approved, is for the Permitting Division. Most of the discussion they have heard involves that division. The Permitting Division is the first area to handle complaints. The results of this audit could lead to a further audit request.

MR. TOLLEFSON stated that he saw the point of seizing an opportunity while we have it.

MS. SOUVIGNEY stated it would be difficult to look at employee turnover in one division, particularly when you look at the shifting which has occurred in the department.

CO-CHAIR COCCHIARELLA stated this would be a way to address problems in a timely fashion.

SEN. BROOKE stated she was in support of the motion. She further commented that it was appropriate for the EQC to explore the staff morale and turnover in the entire department at a later time. She didn't believe the audit committee was the right tool in this regard.

CO-CHAIR COCCHIARELLA asked the members of the Council to submit comments to MR. EVERTS or her within the next few days.

**Vote: THE MOTION CARRIED ON ORAL VOTE.**

**Motion: CO-CHAIR COCCHIARELLA MOVED THAT EQC SEND A LETTER TO DIRECTOR SIMONICH REQUESTING HIM TO POST THE LEGISLATIVE AUDITOR'S FRAUD HOTLINE NUMBER ON EVERY AVAILABLE EMPLOYEE BULLETIN BOARD.**

CO-CHAIR COCCHIARELLA stated that fraud included anything seen as breaking the law. This is totally confidential and is outside the Executive Branch. She assumed that **Director Simonich** would not find this request to be offensive because he has made a commitment to the EQC that the employees will have every right to speak honestly and openly.

MR. SORENSEN hoped that the employees could be informed that that is their right without mandating this procedure. He thought this might set up an atmosphere of paranoia. He would like to have a much more cooperative posture in this matter.

SEN. MCCARTHY questioned whether this number was not readily available to state employees.

SEN. BROOKE supported the motion. The governor strongly emphasized that there are protections for state employees.

CO-CHAIR COCCHIARELLA withdrew the previous motion. She further stated that the EQC could send a request to **Director Simonich** asking him to disseminate the fraud hotline number to his employees in whichever manner he chose.

**Ms. Lapeyre** remarked that the DEQ has a new employee orientation every month. This information may be given to the employees at that time. That would not deal with existing employees. Perhaps **Director Simonich** could be asked if the information is available and whether he had any ideas about disseminating the information.

CO-CHAIR COCCHIARELLA stated that if the motion failed, she would talk to **Director Simonich**. The employees need to have access to someone outside the agency.

SEN. GROSFIELD remarked that he was not comfortable with the EQC making the above-mentioned recommendation. He favored calling **Director Simonich**.

CO-CHAIR COCCHIARELLA withdrew her motion. She stated that she would call **Director Simonich**.

REP. BEAUDRY suggested that at the next staff meeting in the Governor's Office **Ms. Lapeyre** could ask if all directors made sure that appropriate and relevant information was made available to state employees.

**Ms. Lapeyre** stated it would be appropriate to ask Lois Menzies, Director of the Department of Administration, to check into whether there is a consistent policy for providing this information.

CO-CHAIR MESAROS commented that he encouraged the use of this hotline where necessary. He would prefer having **Ms. Lapeyre** carry the message so that it would be consistent throughout all departments.

CO-CHAIR COCCHIARELLA asked if the EQC wanted a detailed report of the reorganization.

CO-CHAIR MESAROS remarked that **Director Simonich** communicated that he would be more than happy to do this. This could be a future agenda item.

CO-CHAIR MESAROS stated that he had been given information regarding the Kendall Mine. There is a landowner who asked that alleged impacts be reviewed. It was also mentioned in testimony this morning.



REP. BEAUDRY stated that during the meeting, a person who was testifying brought up the name of someone who was not present. That was improper. He has always found Sandra Olsen to be extremely professional.

CO-CHAIR COCCHIARELLA stated that there has been an issue brought up by Sen. Baer and Rep. Keenan regarding a gravel pit. She has seen the gravel pit. This controversial issue will be on a future agenda for public discussion. A new permit is being expanded and the people who live in the area are objecting.

SEN. BROOKE stated that the fact that the EQC asked for information from the DEQ prompted **Governor Racicot's** request to make a presentation before the Council. She is not convinced that the EQC is the right body for the hearing that took place. It almost seemed that Cathy Siegner was on trial. There was no rebuttal. She was concerned about this happening again in the future. It was set up as a legislative hearing and yet there was only one person speaking.

CO-CHAIR COCCHIARELLA stated they spent approximately 25 hours in planning that one event. She believes that the EQC is the right forum because the Governor chose to respond for **Director Simonich**. She asked Cathy Siegner if she wanted to say anything. Ms. Siegner maintained that if she wanted to, she would.

MR. SORENSEN stated that if there were other personnel issues in DEQ or other departments, the EQC should not be the forum to address those issues.

MS. SOUVIGNEY stated that they did not ask for the report which the Governor gave. They asked for information about items being withheld, which goes along with MEPA and public access to documents. We need to be more specific and ask for the public access issues.

#### **X. CONFIRMATION OF EQC INTERIM CALENDAR AND SCHEDULE OF OUT OF HELENA EQC MEETING**

SEN. MESAROS stated that if the Council canceled the December 4th meeting, they could have three more out of Helena meetings. The June meeting is scheduled for Dillon. There is a major irrigation proposal in Sidney. It involves the Major Facility Siting Act.

MR. SORENSEN stated that if there was an interest in traveling to Libby or the Flathead area, Plum Creek would be willing to set up a mill tour or help organize a bull trout discussion session.

The Council decided to have the CO-CHAIRS and staff decide on future meeting locations.

**XI. ADJOURNMENT**

There being no further business, the meeting adjourned at 5:30 p.m.